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GOVERNMENT OF INDIA

MINISTRY OF LABOUR

NOTIFICATION*New Delhi, the 12th/14th November, 1949*

No. LR-2(182) I. - In pursuance of section 17 of the Industrial Disputes Act, 1947 (XIV of 1947), the Central Government is pleased to publish the following award of the Industrial Tribunal, Calcutta, in the industrial dispute between the workmen of the Barasat Basirhat Light Railway and the management, namely, Messrs Roy and Company Limited, Calcutta.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT CALCUTTA.

REFERENCE No 4 of 1949

Before F. Jeejeebhoy, Barrister-at-Law, Chairman

Parties—The Workmen employed in the Barasat Basirhat Light Railway.

AND

Their Employers, represented by the Managing Agents Messrs. Roy & Co., Ltd., 22, Canning Street, Calcutta

APPEARANCES

For the Workmen: Sri Paritosh Banerjee and Sri J. N. Mitra;

For the Company: Sri S. C. Sen (Counsel) and Sri N. Das Gupta.

AWARD

By Notification No LR-2 (182) I, dated 27th July 1949, the industrial dispute between the workmen employed in the Barasat Basirhat Light Railway and the management, namely, Messrs. Roy & Co, Ltd, Calcutta, was referred to this Tribunal for adjudication.

As it had been previously agreed that my award in the Martins Light Railways Reference would generally apply to this Railway on all points therein decided, the following issues for trial were framed by consent:

ISSUES

(1) What should be the Dearness Allowance payable to the staff.

(2) As regards Provident Fund:

- (a) Is the Provident Fund benefit and gratuity calculated from the date of the appointment of the employee; and if not, is any change desirable.
 - (b) Has there been any deprivation to the employees by reason of change of Managing Agency.
 - (c) Should the staff be supplied with copies of their individual statements of account and if so, at what intervals.
- (3) Was Satish Das, S. M., wrongfully dismissed as the result of unfair labour practice and is he entitled to any relief.
- (4) Has there been any violation of agreement between the Company and the Union regarding the recruitment of outsiders in preference to existing and old staff; if so, what order should be passed in this matter.
- (5) Should there be any orders passed regarding the abolition of the contract system of labour.

The first issue relates to the payment of Dearness Allowance to the staff. At the inception of this Reference Sri Sen stated that generally speaking the award (to be published) in the Martins Light Railway dispute would apply to this adjudication, subject to certain limitation as regards the Company's capacity to pay. The Martins Light Railways award has now been duly published, and Sri Sen asks that in view of the present financial position of the Company, the application of that award as to Dearness Allowance should be deferred for one year.

On 26.9.49, I fixed this case for hearing on the 24th of October 1949, thus giving the parties ample time to prepare for trial. As the employers pleaded financial incapacity to implement the award as regards Dearness Allowance for a period of one year, the burden naturally lay upon them to establish that owing to financial difficulties they were unable to start paying the enhanced Dearness Allowance from the date on which the Martins Light Railways have been directed to pay it. When the hearing started on 24th October 1949 it became obvious that the employers did not have ready the requisite facts and figures to support their claim; accounts were produced for the period ending 30th September 1948, and even as to the last six months of this period there are no audited accounts, the accounts for the most relevant period of the last one year were not available. At the request of Sri Sen, I gave two days further time for the production of such accounts; but when the hearing was resumed on the 27th October 1949, the accounts were still not forthcoming and further time was requested, which was refused, as it was felt that the employers were trifling with the time and the patience of the Tribunal, specially as I had arranged for the attendance of a Chartered Accountant to examine the accounts. Either the accounts were not in order or the employers were reluctant to produce them, and this Tribunal was not prepared to countenance such an attitude.

I hold that the employers have failed to prove financial incapacity as stated by them, and I direct that the Dearness Allowance shall be paid by the employers in exactly the same manner as ordered in the Award of the Martins Light Railways.

In the result it is ordered that the Martins Light Railways award published in *Gazette of India Extraordinary* dated 5th September 1949 at pages 1583 to 1589 shall apply to the disputes between the parties hereto as to all similar matters determined by that award.

Issue No. (2): This concern was being managed by Martin & Co. as Managing Agents. It was taken over by the present management last on the 1st November 1948. The Provident Fund of the employees with Martin & Co. has not however yet been transferred to the new management. I am told that there is a trust deed for the management and protection of the Provident Fund, and that negotiations are now afoot with Martin & Co. for the execution of a fresh trust deed and for the transfer of the assets of the Provident Fund to the new trustees. In the meantime the Provident Fund moneys have been accumulating with the new management, and they have not been keeping these moneys apart from their other funds. This is a most unsatisfactory state of affairs.

I direct that early steps be taken to vest the Provident Fund in proper trustees for the benefit of the subscribers to the fund; that the terms of the Provident Fund shall not be altered to the detriment of the subscribers; and that the Trust deed do provide for the appointment of responsible trustees to take charge of and manage the Provident Fund. The Trust deed shall provide that all current moneys, securities, documents of title, and valuables of the Provident Fund shall be deposited in and shall remain at all times in the custody of the Imperial Bank. It is also ordered that all moneys accumulated with the present management on account of the Provident Fund, and all moneys to accrue to the fund until the new trustees are duly vested with the Provident Fund, shall be forthwith deposited into a Provident Fund account in the Imperial Bank. The employers are warned that the Provident Fund money is trust money and must be treated as such, and should not be mixed up with the funds of the Company.

It is ordered that each workman shall receive in the first week of January every year a statement of his provident fund account.

Issue No. (3): This issue relates to the dismissal of one Satish Das, a station master in the employ of the Company. He was suspended on the 20th October 1948 without any allowance or pay, and was given a Charge Sheet (Ex. D) on 16-12-48. An enquiry was conducted into the charges by Mr. N K. Bose, the then General Manager of the Company, who gave his decision on 11-3-49, to the following effect:—that S. C. Das be granted half pay for the period under suspension, and that “he be taken off suspension and posted to another station.” This order was not communicated to S. C. Das, and in fact nothing further was done until S. C. Das sent a lawyer’s notice complaining about his being kept under suspension for so long a period. Thereupon the Company informed Das’s pleader by letter of 18th July (Ex. E) that his services were dispensed with with immediate effect. S. C. Das was an active member of the Union of 20 years standing; and he now claims back pay and reinstatement.

Now, it is not my function as a Tribunal to substitute my own judgment for the judgment of those who are required to make decisions on questions of misconduct. But it is certainly my function to interfere if there has been any violation of the principles of natural justice. In this case I have carefully perused all the papers, and it is difficult for me to understand on what basis the considered decision of the General Manager has been set aside. I was shown a short order of about ten words by which a Director of the Company, on receipt of the lawyer’s notice, forthwith decided to discharge Das who had

80 years service in the Company to his credit. I have no doubt that such order proceeded more from a sense of annoyance than from any calm consideration of Das's case. The fact remains that the offences alleged to have been committed in September and October 1948 were investigated in January 1949, and were the subject of the General Manager's decision in March 1949. Nothing thereafter was done until the unfortunate man sent the lawyer's notice; and then he was promptly dismissed. In the meanwhile for the whole period of suspension Das was receiving no subsistence allowance and had no means of livelihood.

This Railway was being managed by Martins until it was taken over with its staff by the present management in September 1948. According to the procedure of Martins Light Railways enquires were expeditious, and a person under suspension was always given subsistence allowance, generally half pay and Dearness Allowance.

I hold that S C Das has been the victim of an injustice, and it is just that the Tribunal should intervene. The order of the General Manager is on the face of it reasonable, and I hold that there is no valid considered order to the contrary of which this Tribunal can take notice. The investigation was properly conducted by the General Manager and I have no intention of substituting my own judgment for his or altering his decision in a matter of this kind. I therefore make the following order in this case—I adopt the decision of the then General Manager of the Railway as stated in Ex 2(c). I direct that S. C. Das shall be deemed to have been under suspension on half pay and allowances for the period from 20-10-48 to 11-3-49 forenoon. He shall be deemed to have been released from suspension and reinstated in service on full pay as and from 11-3-49, and shall be entitled to full pay and allowances from 11-3-49 to date. S. C. Das shall be reinstated to the same status and pay as at the time of suspension.

Issue No. (4): It has been said by the workmen that there was an agreement with Martin & Co. that 80 per cent of new appointments should go to the sons and relatives of workmen. The present management, while disputing the existence of such an agreement, said that they are quite prepared to give priority to the sons of workmen, all things being equal. This is reasonable enough. It has also been alleged that outsiders are taken into the higher grades although persons in lower grades are ripe for promotion and it is pointed out that 16 T. T. Es were appointed from outside on a fixed salary of Rs. 60 a month, thereby creating a discrepancy of unequal pay for the same class of work. Sri Sen for the Company contended that existing staff is always entitled to promotion if found suitable. I feel however that on this subject the employers have acted improperly in that they have not given sufficient chances of promotion to the existing staff when making appointments to the higher grades. Parties agree that on this issue I should make the same order as I have made on Issue No. 10 in the Martins Light Railway award, namely:

"There is no contest that other things being equal the next senior man should be selected for promotion; but in my opinion it would be detrimental to discipline and efficiency if promotions were ordered to proceed on seniority alone. I think that the following directions should provide an adequate guide:

- (a) Other things being equal promotion is to be made by seniority but if a workman is not to be promoted by seniority, the final orders of the Managing Agents shall first be obtained. Before promotion is made, or in order to confirm promotion, the Management shall be entitled to be satisfied as to the fitness of a workman for promotion, if necessary by individual tests relating to the work

which he will be required to do. If the Departmental Head does not propose to promote the next senior man he shall inform him thereof, in which case the latter shall be entitled to make a representation to the Directors through the Works Committee or direct if he so likes. Such representation shall be made forthwith so that the decision of the Directors may not be delayed. The President or the Secretary of the Union may also interview the Managing Director concerning such promotion but before final orders are passed. (I do not favour the idea of the management stating in writing the reasons for supersession, and the Union agrees with me that it may prejudice the workman's future).

- (b) Wherever Government certificates are required, they shall be considered essential for appointment or promotion.
- (c) Normally, promotions will be within the same Department, but persons in the employ of the Company shall be given chances of transfers when vacancies occur (subject to the claims of those within the Department)".

Issue No. (v): There are two stations on this Railway Kazipara and Kartickpur, both flag stations, where the Company keeps a porter as a permanent employee and a contractor as the booking clerk. The contractor is paid Rs. 15 as allowance and a commission of 10 per cent. on the sale of tickets, and this practice has been in existence since 1939. The workmen contend that this contractor should be eliminated and should be replaced by a whole time workman. I doubt if the workmen are entitled to make a claim of this kind—but apart from that it is doubtful if any change at present would be justified. These two stations were opened at the request of the public, and are not strictly remunerative. The monthly sales of tickets at these stations as well as goods bookings are limited. If the Company is compelled to place a whole-time employee at these stations, there will be the temptation to close down these stations as an unremunerative propositions, to the inconvenience of the public. In these circumstances I do not think that any order on this issue is indicated.

Copy of Exhibit 2(c) is attached to this award.

NOW, THEREFORE, THIS TRIBUNAL MAKES ITS AWARD IN TERMS AFORESAID, THIS THE 30TH DAY OF OCTOBER 1949.

F. JEEJEEBHOOY,

Chairman,

Central Government Industrial Tribunal at Calcutta.

EXHIBIT 2(c).

Finding:

Having considered all the evidence, I find:—

That Mr. S. C. Das, Station Master, Beliaghata Bridge is responsible for booking a large number of consignments of Salt and Bidi Leaves on 9th October 1948, in the face of written orders and Messages from the Traffic Inspector, Shambazar forbidding him to do so. Due to the E. I. R. having imposed a restriction at Baraset against acceptance of these goods, this Railway was saddled with the protection of same from weather and from pilferage.

Note on the finding and recommendation.—

While the Station Master, S. C. Das is responsible for the booking of Salt and Bidi Leaf consignments against the Traffic Inspector's instructions and

under strong influence of the Merchants concerned, there are some extenuating circumstances as follows:—

(1) The Station Master was not made aware of the restrictions imposed by the O. & T. Ry. against the through booking of these goods to stations in its jurisdiction. Further the Circular issued by the E. I. R. allotting quotas to different railways for booking of Salt was not brought to his knowledge.

(2) The Station Master had received permission from Martin's Railways to accept such consignments on receipt of advice from the Traffic Inspector that there were no restrictions or operational difficulties. The T. I. did not clear up this matter, although pressed by the Station Master. Please see letter R 257 of 24-6-48 to S. M., Beliaghata Bridge attached herewith.

(3) Prior to 9-10-48, some consignments had been accepted by the E. I. R. at Baraset and this fact would mislead S. C. Sen.

(4) The part played by Mr. J. C. Roy, Traffic Inspector, in handling the situation, lacked in energy. He should have made personal contact with the Traffic Officer of Martin's Railways and appraised him fully as to what was about to happen.

(5) S. C. Das has consistently maintained that he was not doing anything prejudicial to the interests of the Railway. On the other hand he was securing for the Railway, additional earnings.

In the light of the above considerations, I recommend that:

- (1) Half pay be granted to S. C. Das for the period he has been under suspension.
- (2) That he be taken off suspension and posted to another Station.

S. N. K. BOSE,
General Manager,

Baraset-Basirhat Light Rly. Co., Ltd.

11-8-49.

N. C. KUPPUSWAMI,
Under Secretary to the Government of India.